



DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

GRADING AND STORMWATER MANAGEMENT DESCRIPTION OF THE PROPOSED CHANGES

Typically, during ordinance and General Plan amendment procedures, the Planning Commission will be provided with a “redlined” copy of the ordinance. This generally shows how the existing ordinance reads and what specific changes are being recommended.

Unfortunately, the Grading and Stormwater Management Revisions are not well-suited to a redline format. The reason for this is two fold:

- The ordinance is lengthy. The proposed grading ordinance alone is 67 pages in length.
- Various ordinance sections are being moved, consolidated, and separated. In these cases, while the language is kept the same, the location within the document is changing. This is not effectively communicated in a redline format.

As a result of these project specific characteristics, a redlined set of revisions becomes unclear and unreadable. In lieu of a redline set of revisions, staff has provided the following summary of the changes that are proposed for the Coastal Plan Policies, North Coast Area Plan, Land Use Ordinance (LUO – Title 22 of the County Code), and the Coastal Zone Land Use Ordinance (CZLUO – Title 23 of the County Code).

The following list summarizes the proposed changes, with a more detailed description provided on subsequent pages:

- 1) Add General Municipal Separate Storm Sewer System Permit standards, which regulate stormwater discharge associated with certain types of development.
- 2) Add General Construction Permit standards, which regulate stormwater discharge for projects involving one acre or more of site disturbance.
- 3) Modify the enforcement program for the grading ordinance.
- 4) Modify the threshold for grading permits.
- 5) Modify agricultural exemption and alternative review program procedures.
- 6) Prohibit grading on slopes over 30 percent.
- 7) Add provisions for hydromodification.
- 8) Bring coastal and inland grading ordinances into alignment.
- 9) Expand agricultural exemptions and introduce alternative review to the Coastal Zone
- 10) Lodge Hill erosion control program.
- 11) Reformatting and refining.
- 12) Update section references.
- 13) Add definitions.

1) Add General Municipal Separate Storm Sewer System Permit standards, which regulate stormwater discharge associated with certain types of development.

SECTIONS AFFECTED

LUO Section 22.10.150 – Solid Waster Collection and Disposal
LUO Section 22.10.155 – Stormwater Management (new)
LUO Section 22.52.120, subsection C – Stormwater Quality Plan (new)
CZLUO Section 23.04.280 – Solid Waster Collection and Disposal
CZLUO Section 23.04.450 – Stormwater Management (new)
CZLUO Section 23.05.042, subsection C – Stormwater Quality Plan (new)

PURPOSE

The General Permit requirements are being incorporated into local ordinances. These requirements would specify that drainage plans and erosion and sedimentation control plans be developed at the discretionary permit review stage. This would apply only to certain uses regulated under the Municipal Separate Storm Sewer System (MS4) General Permit. Site development plans would need to incorporate appropriate Best Management Practices (BMPs) to avoid the potential for contaminants to be transmitted to stormwater. The County is required, under the Stormwater Management Program (SWMP) to incorporate these measures into our zoning ordinances by March 2010.

Required by: Best Management Practice (BMP) PC1A in the County SWMP.

DESCRIPTION

Applicability. The stormwater management ordinance will apply to the following types of development:

- Single family residences on slopes of 10 percent or greater;
- Multi-family residential, commercial, institutional, or light industrial development involving 100,000 square feet or more of impervious area (including parking);
- Automobile vehicle repair, service stations, and gas stations;
- Restaurants;
- Residential subdivisions with the potential for development of ten or more housing units; and
- Parking lots with 25 or more spaces or an area of 5,000 square feet or greater.

Projects which involve additions to existing permitted development will not be subject to this ordinance only if they do not increase impervious areas by more than 50 percent.

Required Submittals. The requirements will be triggered as part of the discretionary land use permit, land division, or grading permit process. Projects requiring only ministerial building permits will not be subject to these requirements. Through the discretionary permit process, the applicant will be required to supply the following as part of the application:

- A Stormwater Quality Plan (SWQP), which is a form to be filled out to document how the project will comply with provisions in the County's Low Impact Development (LID) Handbook;
- A Drainage Plan; and
- An Erosion and Sedimentation Control Plan.

The LID Handbook is a guidebook for the implementation of LID practices, including structural control, treatment control, and hydromodification standards. The Handbook is in development by the Department of Public Works in compliance with a separate requirement in the Stormwater Management Program. The Stormwater Management Ordinance will essentially provide enforceability for the measures outlined in the LID Handbook.

Site Design. The site plan and the above plans will need to demonstrate that the project has been designed to conserve natural areas. Specifically, the applicant will need to provide a narrative description justifying that the site design addresses the following criteria:

- Concentrate/cluster development, leaving the remainder of the site in a natural state;
- Minimize vegetation clearing / grading;
- Avoid significant topographic features and areas of native vegetation;
- Plant native/drought tolerant vegetation and cluster tree areas; and
- Preserve riparian corridors and wetlands.

Best Management Practices (BMPs). BMPs selected for the project will generally need to include both structural and treatment control measures. These measures will need to be designed to focus on potential pollutants of concern associated with the proposed development. For example, a restaurant might design their measures to focus on such things as grease and oils. The Low Impact Development (LID) Handbook includes examples of appropriate BMPs for specific uses.

Long Term Maintenance. Post-construction BMPs are by their nature meant to be in place for the life of the project. The ordinance will include provisions for long-term maintenance of post-construction BMPs. The responsibility of maintenance will generally run with the land, meaning that after the developer sells the land, new owners will need to carry on maintenance tasks. Long-term maintenance will be ensured with the following measures:

- A document will need to be recorded on title asserting the owner's responsibility to maintain the BMPs. This can be in the form of Covenants, Conditions, and Restrictions (CC&Rs) or a mitigation agreement;
- Transfer of the property is to include conditions for the maintenance of BMPs; and
- With the first deed transfer, the developer is to provide the new owner with printed educational materials concerning BMP maintenance.

Standards for Specific Uses. Specific standards also apply to certain uses. These standards will relate to site design for specific facilities. For example, fueling areas must be paved, covered, and cannot allow run-off to leave the fueling area. Site plans and drainage plans will be reviewed for consistency with these requirements during the discretionary permitting process. Additionally, minor modifications are proposed to the *Solid Waste Collection and Disposal* ordinance section in order to require that trash enclosures be designed to avoid stormwater impacts.

METHOD

Staff proposes that the stormwater management measures be incorporated as a new section in the General Property Development Standards chapter of the Land Use Ordinance (Section 22.10.155) and in the Site Design chapter of the Coastal Zone Land Use Ordinance (Section 23.04.450). Modifications to trash enclosures design standards will be incorporated to the existing Sections 22.10.150 and 23.04.280 pertaining to solid waste collection and disposal. All erosion and sedimentation control plans will also be required to supply an SWQP application, unless exempted by the Director (22.52.120C / 23.05.042.c).

RESULTS

Compliance with Best Management Practice PC1A, as identified in the San Luis Obispo County Stormwater Management Program. Additionally, this will result in compliance with Recommendation 3-6c from the Coastal Commission's 2001 Periodic Review of the County's Local Coastal Program, which would require a water quality plan for most development projects.

2) Add General Construction Permit standards, which regulate stormwater discharge for projects involving one acre or more of site disturbance.

SECTIONS AFFECTED

LUO Section 22.52.130 – Stormwater Pollution Prevention Plan (new)
LUO Section 22.52.150 – Standards (formerly 22.52.130) – refer to subsection D
CZLUO Section 23.05.044 – Stormwater Pollution Prevention Plan (new)
CZLUO Section 23.05.048 – Standards (formerly 23.05.034) – refer to subsection d

PURPOSE

Development involving one acre or greater of site disturbance or which could discharge into an impaired watercourse are presently required to seek coverage under the State Water Resources Control Board's (SWRCB's) General Construction Permit. To obtain coverage under this permit, the owner must produce a Stormwater Pollution Prevention Plan (SWPPP). This section is being added to mirror the requirements under the SWRCB's General Construction Permit. A SWPPP would be required based on the same thresholds, and would need to be submitted to the County for review and approval. This would enable the County to seek modifications to a SWPPP and would also enable the County to enforce provisions under an approved SWPPP. The County is required under the adopted SWMP to incorporate General Construction Permit requirements into the grading ordinance.

Required by: Best Management Practice (BMP) CON1A in the County SWMP.

DESCRIPTION

Applicability. A SWPPP is required for any project that must seek coverage under the SWRCB's General Construction Permit. This includes the following types of projects:

- Projects involving one acre or greater of site disturbance. Vegetation removal is counted as site disturbance;
- Projects involving one acre or greater of site disturbance as part of a larger plan of common development. For example, a 5-lot subdivision where each lot would require site disturbance of 10,000 square feet would trigger this requirement; or
- Projects which have the potential to discharge into an impaired watercourse. A list of impaired watercourses in the County is provided in the Draft Environmental Impact Report (Table 4.5-1 on Page 4.5-4). This list is periodically updated by the SWRCB. The SWRCB's website should be reviewed for the most up-to-date list of impaired water bodies.

The RWQCB has the ability to waive or conditionally waive coverage under the General Construction Permit for certain types of projects. For example, there is a conditional waiver program available to agriculturalists. Projects which qualify for a waiver or conditional waiver would also be exempted from the County's SWPPP requirements.

Contents of a SWPPP. The SWPPP is a document composed of both graphical and narrative exhibits, which details the measures to be undertaken before, during, and after construction in order to reduce discharges of pollutants through stormwater. In brief, a SWPPP contains the following features:

- A site plan;
- An erosion and sedimentation control plan, and a drainage plan;
- Identification of potential pollutant sources and BMPs to address them;
- A construction schedule;
- Identification of the responsible person for implementing the SWPPP;
- Inventory of materials and activities;
- Provisions for maintenance, inspection, and repairs; and
- A monitoring and reporting program, which may include water quality testing.

The SWPPP is a working document. As the project progresses, the engineer or responsible party may feel a need to amend the SWPPP to reflect changing site conditions. Monitoring reports and documentation of circumstances of non-compliance are to be added to the document and are to be kept on the construction site at all times.

Operational Standards. The general purpose of the SWPPP operational standards is to ensure that a project does not cause or threaten to cause pollution, contamination, or nuisance resulting from stormwater discharges.

METHOD

Staff proposes that the requirements for preparation and contents of the SWPPP be incorporated as a new section in the Grading chapter of the Land Use Ordinance (Section 22.52.130), and the Site Development chapter of the Coastal Zone Land Use Ordinance (Section 23.05.044). Operational standards would be added under a new subsection of the existing “Standards” section in both ordinances (LUO Section 22.52.150; CZLUO Section 23.05.048).

RESULTS

Compliance with Best Management Practice CON1A, as identified in the San Luis Obispo County Stormwater Management Program.

3) Modify the enforcement program for the grading ordinance.

SECTIONS AFFECTED

LUO Section 22.52.090, subsection C.3 – Unpermitted Grading (new)
LUO Section 22.52.190 – Enforcement and Interpretation (formerly Section 22.52.140)
CZLUO Section 23.05.036, subsection c(iii) – Unpermitted Grading (new)
CZLUO Section 23.05.056 – Enforcement and Interpretation (new)

PURPOSE

The Stormwater Management Program (SWMP) requires that the County enforce both the MS4 post-construction requirements (Item 1 above) and the General Construction Permit requirements

(Item 2 above), which are proposed to be added to the Land Use Ordinance and Coastal Zone Land Use Ordinance.

Required by: Best Management Practice (BMP) CON1B in the County SWMP.

DESCRIPTION

Enforcement for grading and stormwater discharge violations can take two forms: criminal and civil.

Criminal. Violations to grading and stormwater standards may be filed either as infractions or misdemeanors. In either case, fines are set by the Superior Court's bail schedule. Sections pertaining to criminal violations were left unchanged from the existing inland grading ordinance, with one exception: reference was made to the ability to prosecute for violation of the Clean Water Act.

Civil. Violations may also be pursued civilly. For civil violations, the penalty the County may seek is proposed to be raised from \$6,000 to \$25,000 per violation / day. This amount is in line with the civil penalties established under both the Clean Water Act (federal) and the Porter-Cologne Act (state).

Additional enforcement provisions which will be new to the existing inland enforcement standards include the following:

- Ability for the County to publish the name of any violator of stormwater requirements (when posing a significant danger to the public health and safety or the environment) in a local newspaper;
- Ability for the County to recuperate any fines levied against it by the RWQCB or SWRCB as a result of a violator's actions; and
- Additional requirements for unpermitted ("as-built") grading – including a provision that unpermitted grading projects are not eligible for alternative review, unless the Director deems it warranted.

METHOD

An enforcement section already exists in the inland grading ordinance (Section 22.52.190). Staff proposes to modify this section and then add a new enforcement section to the coastal grading ordinance (Section 23.05.056), which will mirror the revised inland enforcement section. Sections 22.10.155 and 23.04.450 would also include a provision allowing those sections to be enforced under the grading ordinance enforcement procedures.

A new "Unpermitted (As-Built) Grading" subsection is also proposed to be added (Section 22.52.090C.3 / 23.05.036.c(3)). This section will codify the as-built grading procedure that the County has already been following.

RESULTS

Compliance with Best Management Practice CON1B, as identified in the San Luis Obispo County Stormwater Management Program.

4) Modify the threshold for grading permits.

SECTIONS AFFECTED

LUO Section 22.52.060 – Grading (formerly Section 22.52.040)

LUO Section 22.52.070 – Exemptions from Grading Permit (formerly Section 22.52.050)

CZLUO Section 23.05.030 – Grading (formerly Section 23.05.020)

CZLUO Section 23.05.032 – Exemptions from Grading Permit (formerly Section 23.05.026)

PURPOSE

The goal in modifying the grading thresholds is to: 1) simplify the thresholds to something that the general public can easily understand; 2) avoid conflicting language; and 3) to encompass grading projects which have the potential to affect the environment.

Inland. The current inland grading ordinance defines grading based on a relatively complex set of provisions. Grading is defined as:

- Cut/fill involving 50 cubic yards – AND
 - Excavation greater than 2 feet deep – OR
 - Cut slope greater than 5 feet in height – AND – steeper than 1.5:1 – OR
 - Fill intended to support a structure that is greater than 1 foot deep – AND – placed on a natural slope that is greater than 20 percent – OR
 - Fill is not intended to support a structure – AND – fill is more than 3 feet deep – AND – fill does not obstruct or alter a drainage course
- However, grading as defined above is exempt under the following circumstances:
 - Excavation occurs on natural slopes of less than 20 percent – AND – is less than 2 feet in depth – AND does not exceed 50 cubic yards of cumulative grading – OR
 - Excavation does not exceed a cut slope greater than 5 feet in height – AND – is not steeper than 1.5:1 – AND – does not exceed 50 cubic yards of cumulative grading – OR
 - Fill is less than 1 foot in depth – AND – may support structures or improvements – AND – placed on natural slopes of 20 percent or less – OR (*Note: There is no limit to the amount of material that could be placed on a parcel under this existing provision*)
 - Fill is less than 3 feet in depth – AND – is not intended to support structures – AND – is placed on slopes of less than 20 percent – AND – does not exceed 50 cubic yards – AND – does not obstruct or alter a drainage course

Because of the complexity (14 “and” statements, 6 “or” statements) it is often difficult for a landowner to determine if they are triggering a grading permit. Moreover, the definition of grading, as provided above, essentially exempts the importation of an unlimited quantity of fill as long as it is spread over the land less than one foot in depth.

Coastal. Within the coastal zone, grading is presently triggered when involving 50 cumulative cubic yards of earthwork. There are also specific exemptions from grading permit requirements:

- Excavations less than 2 feet in depth – OR
- Excavations which do not create a cut slope greater than 5 feet in height – AND – do not create a cut slope steeper than 1.5:1 – OR
- Fills less than 1 foot in depth – AND – located on natural slopes of less than 20 percent – OR

- Fills which are less than 3 feet in depth – AND – are not intended to support structures – AND – do not exceed 50 cubic yards – AND – do not obstruct a drainage way.

While the definition in the coastal zone is more simplistic, it still would exempt large quantities of fill spread on relatively level terrain with a depth of no more than 1 foot.

DESCRIPTION

The proposed modification would require a grading permit under the following three circumstances:

- **Between 50 and 500 cubic yards.** When cumulative earthwork involves between 50 and 500 cubic yards (inclusive) – AND
 - Cut will exceed a depth of 1 foot – OR
 - Cut slope exceeds 3 feet – OR
 - Cut slope is steeper than 2:1 – OR
 - Fill depth exceeds 1 foot.
- **Greater than 500 cubic yards.** When cumulative earthwork exceeds 500 cubic yards. No additional triggers (i.e. cut/fill depth, etc.) are required.
- **Work in a watercourse.** When cumulative earthwork exceeds 20 cubic yards and will alter/obstruct a drainage way or watercourse.

Additionally, language is proposed to remind applicants that grading can trigger land use permits based on the thresholds in Table 2-3 (Inland) / Table 3-A (Coastal).

Exemptions based solely on cut and fill characteristics have been removed under the proposal. This avoids redundancy, as any earthwork failing to meet the proposed definition of grading would automatically be exempt – i.e. fill or excavation with a depth of less than one foot, a volume of less than 500 cubic yards, and no alteration to drainage courses, would not be considered as grading requiring a permit. The proposed revision eliminates the potential to place an undetermined / unlimited amount of fill on a parcel without requiring a grading permit where the fill is less than 1 foot in depth.

METHOD

The definition of grading requiring a permit will be modified in Section 22.52.060 / 23.05.030. Exemptions based on cut/fill characteristics were removed from the exemption sections (22.52.070 / 23.05.032).

RESULTS

The definition of *grading requiring a permit* will be clarified. This will enable the general public to have a more clear understanding of when grading will be required. Additionally, it will help make the ordinance more enforceable as language creating potential contradictions will be removed.

5) Modify agricultural exemption and alternative review program procedures.

SECTIONS AFFECTED

LUO Section 22.52.070 – Exemptions from Grading Permits (formerly Section 22.52.050)

LUO Section 22.52.080 – Alternative Review Program (formerly Section 22.52.050, subsection C.2.c)

PURPOSE

The purpose of modifying the agricultural exemption and alternative review programs is to: 1) reduce the misuse of agricultural exemptions; 2) increase awareness of agricultural exemption requirements; 3) improve water quality by reducing occurrences of erosion and sedimentation; 4) and retain flexibility for legitimate agricultural grading.

The inland grading ordinance presently includes a four tier system for agricultural grading:

- **Level 1** – Must apply appropriate agricultural practices. Includes ongoing crop production, new fields on less than 30 percent slopes, small pond (“irrigation pit”), water lines, and maintenance. *No permit required.*
- **Level 2** – Must apply Natural Resources Conservation Service (NRCS) practices from the Field Office Technical Guide (FOTG). Includes hillside improvements with slopes less than 30 percent, drainage and irrigation improvements, agricultural roads less than 16 feet wide (with other criteria), streambank protection, trails, fire breaks, and conservation projects. *No permit required.*
- **Level 3** – Applicant may choose alternative review by NRCS or Resource Conservation District (RCD), or may apply for a grading permit. Includes agricultural roads not meeting Level 2 criteria, ponds, hillside benches with slopes over 30 percent, major streambank protection, and waste management systems. *No permit required if applicant goes through alternative review.*
- **Level 4** – Requires a County grading permit. Includes grading for structures, driveways, nurseries, equestrian facilities, instream dams, and source material for improvements.

The four-tiered system was put in place with the 1999 grading ordinance revisions. This was a program designed to be flexible for agriculturalists and to employ the collaborative alternative review process, involving resource agencies with specific expertise in agricultural practices and erosion control.

Unfortunately, the agricultural exemption process has also been frequently misused by non-agriculturalists seeking to circumvent the grading permit process. Levels 1 and 2 require no oversight by the county or any other agency. These exempt activities are, however, conditional – on the basis that appropriate agricultural practices are employed and no threats of erosion and sedimentation will occur. Violators who have failed to employ these standards often explain that they were unaware of such conditions. This suggests that a general misconception exists amongst the public that any grading on agricultural land is automatically exempt from permits.

Misuse of the agricultural exemption can often turn a relatively simple grading project into a lengthy and costly process. Such projects can trigger the jurisdiction of state and federal agencies, and may also trigger a discretionary land use permit from the County based on the area of land that has been disturbed.

Of the agricultural grading violations that occurred over the last fiscal year, the majority (64 percent) were concerning agricultural roads. The next most common agricultural grading violation was in relation to ponds (9 percent). As proposed, the revised ordinance will require that all roads and ponds receive a written approval from the Agricultural Commissioner's office justifying the need for the proposed road or pond. These proposals would then be eligible for alternative review.

DESCRIPTION

Proposed modifications. The project would make the following modifications to the agricultural grading provisions in the inland ordinance:

- **Criteria for exemption.** Criteria to qualify for exemption will be clearly articulated. To qualify for an exemption, projects:
 - Cannot be located in geologic study areas or flood hazard areas (except agricultural grading and exploratory drilling).
 - Must receive approval from all appropriate local, state, and federal agencies.
 - Must incorporate all reasonable measures to prevent against erosion and sedimentation.
 - Must not potentially result in a hazardous condition.
- **Modifications to the tiers.** The tier system will be replaced with three types of exemptions and conditional exemptions:
 - *Exempt grading* – Exempt grading requires no County permit as long as it adheres to the criteria for exemption. This includes utilities, exploratory drilling, ongoing agricultural crop production / grazing, and repair and maintenance to legally established facilities. This is similar to the existing “non-agricultural” exemption section in the inland ordinance.
 - *Agricultural grading* – Agricultural grading requires no County permit. An agricultural grading form, however, must first be filled out with the County before initiating site work. This is similar to the Level 2 agricultural exemption in the existing inland ordinance.
 - *Alternative review program* – Projects qualifying under the alternative review program do not require a County permit if they will be reviewed and approved by the NRCS or RCD. Applicants must first fill out a form with the County and then obtain approval from NRCS/RCD. Applicants seeking to build a road or a pond must also obtain approval from the Agricultural Commissioner, who will review the proposal to ensure that the road/pond is of appropriate size and scale for the agricultural use. This is similar to the Level 3 agricultural exemption in the existing inland ordinance.

Any project which does not fall under one of the above categories or cannot adhere to the criteria for exemption will be required to obtain a grading permit from the County prior to initiation of site work.

- **Modification to the exempt uses.** In addition to modifying the procedures for agricultural grading and alternative review, the proposal will also modify which uses fall under which process. A summary table is provided in Attachment 3, which explains the changes in the level of exemption for various agricultural grading practices. Some of the more substantial changes are outlined below:

- *New fields between 20 and 30 percent.* Presently new fields on natural slopes between 20 and 30 percent qualify for agricultural exemption. Under the proposal, only fields less than 20 percent could qualify as agricultural grading. Fields between 20 and 30 percent would be required to go through the alternative review process in order to avoid a County permit.
 - *Agricultural roads.* As discussed above, roads are the most common code enforcement violation pertaining to agricultural grading. Under the proposal, all agricultural roads would need to go through the alternative review process or obtain a County grading permit. Presently, roads which are less than 16 feet in width and do not traverse 30 percent slopes are eligible for an agricultural exemption. As part of the alternative review process, the Agricultural Commissioner will review the proposal to determine if the proposed road features, such as length and width are appropriate for the agricultural use. Any agricultural roads later proposed for access to a structure would require an after-the-fact grading permit.
 - *In-stream ponds.* Presently in-stream ponds require a grading permit. Under the proposal, in-stream ponds would be eligible for alternative review. The reason for this change is that NRCS and RCD are better suited to review, improve, and inspect agricultural ponds. In-stream ponds will trigger the jurisdiction of the California Department of Fish and Game for a Streambed Alteration Agreement. Through this process, compliance with the California Environmental Quality Act (CEQA) will be ensured. In some cases, in-stream ponds will also necessitate review and approval by the US Army Corps of Engineers, the California Department of Water Resources, the US Fish and Wildlife Service, the Regional Water Quality Control Board, and/or the National Marine Fisheries Service. Given the number of resource agencies involved with permitting in-stream ponds, obtaining permits from the County appears to be unnecessary.
 - *Conservation and enhancement.* Conservation and enhancement projects, such as stream and upland restoration, can qualify for exemption or alternative review under the County proposal. To qualify for an exemption, permitting and inspection must occur from another agency, such as the Department of Fish and Game or RCD. This change is meant to streamline the review process for restoration projects.
- **Agricultural grading form.** As part of the agricultural grading and alternative review processes, a landowner will need to first fill out a form with the Department of Planning and Building. This process is envisioned to be similar to the process used for agricultural exempt structures, which is an “over-the-counter” process. The form will be used to verify that the proposed activity will qualify for exemption. Additionally the form will serve to ensure that applicants are aware of the minimum qualifications for exemption and of permitting obligations from other state and federal agencies. A draft example of an agricultural grading form is included in this packet as Attachment 4.

Feedback from ALAB. On August 3, 2009, staff attended an Agricultural Liaison Advisory Board (ALAB) meeting to discuss the proposed changes to the grading ordinance proposed under the July 16, 2009 public review draft. While the ALAB did not take final action to formalize recommendations, staff did receive some general feedback. Much of the feedback was incorporated into the August 28, 2009 public hearing draft. ALAB’s September meeting has been cancelled; however they will have another opportunity to formalize comments prior to the anticipated beginning of public hearings in late October.

The following table summarizes some of the individual comments made by members of ALAB at their August meeting. No recommendations were formally voted on, and therefore the comments do not necessarily represent the opinion of ALAB.

Topic	July 16, 2009 Public Review Draft	Feedback from ALAB members (unofficial)	Changes in August 28, 2009 Public Hearing Draft
Agricultural Roads	Alternative review for roads up to 16 feet in width and up to 30 percent in natural slope. Grading permit for all others.	All agricultural roads of an appropriate width should be able to go through alternative review. Agricultural commissioner can determine appropriateness of road width.	Alternative review program extended to all agricultural roads, with Agricultural Commissioner to make a determination on appropriateness of width.
Stock ponds	Ponds for irrigation or frost protection less than 1 acre-foot qualify as agricultural grading.	Include reference to using ponds for livestock purposes.	Livestock reference added.
Definition of excavation	No changes to existing ordinance definition of excavation.	The definition of excavation should not include agricultural cultivation.	Excavation definition updated to exclude agricultural cultivation.
50 cubic yard threshold	Grading is triggered at 50 cubic yards regardless of cut/fill depth.	Improvements to agricultural roads on relatively level terrain should not qualify as grading (necessitating alternative review).	Grading between 50 and 500 cubic yards is only triggered if cut/fill exceeds a depth of one foot.
Agricultural exemption	Exemptions pertaining to agriculture were termed "agricultural exemptions."	There was concern that using the term "agricultural exemption" might lead the public to believe that agricultural grading is always exempt. The exemption is actually conditional.	Exemptions pertaining to agriculture were re-termed "agricultural grading."

Additionally, some issues were raised by ALAB members, which have not been addressed in the public hearing draft:

- A member was concerned that to qualify as "ongoing crop production," ripping could not exceed a depth of two feet. The member explained that in vineyards ripping often occurs at depths beyond three feet. Another member disagreed, stating that deep ripping is an over-used practice and does not further the goal of soil conservation.
- Some members were concerned that requiring agricultural roads to go through alternative review would be too onerous. Another member, however, pointed out that roads are the most common cause of soil erosion in agricultural operations.
- The general membership was concerned that the general public is not aware of the requirements for exempt grading or alternative review. In particular, they were concerned

that non-agriculturalists buying into agricultural land are not aware that grading permits are required. Some suggestions included a required disclosure with deed transfer (similar to the “right-to-farm” disclosure) and a mailing to go out with the property tax statements.

- A member was concerned that certain parties see violation fines for unpermitted grading as a cost of doing business. The member suggested that additional penalties, such as restriction on getting permits for a specified period of time, might be appropriate to discourage unpermitted grading.

METHOD

Exempt grading is addressed in Subsection B of Section 22.52.070 / 23.05.032. Agricultural grading is addressed in Subsection C of Section 22.52.070 / 23.05.032. The alternative review program is addressed in Section 22.52.080 / 23.05.034.

RESULTS

By implementing these revisions, staff anticipates that the instances of agricultural exemption misuse will be reduced and that grading violations pertaining to agricultural grading will be reduced. Additionally, these revisions should aid in the enforcement of the grading ordinance. The overall result would be a reduction in erosion and sedimentation and improvement to water quality and associated habitats.

6) Prohibit grading on slopes over 30 percent.

SECTIONS AFFECTED

LUO Section 22.52.060, subsection B.2 – Slopes (new)

PURPOSE

The Draft Conservation and Open Space Element (COSE) includes a policy in the Soil Conservation chapter. This draft policy, SL 1.3.2, requires that grading be prohibited on slopes in excess of 30 percent unless variance approval has been obtained. Adding this prohibition to the grading ordinance would implement this draft policy. This would avoid future amendment to the grading ordinance, which might be required if this policy gets adopted.

DESCRIPTION

Grading would be prohibited on slopes over 30 percent, with two exceptions:

- **Variance.** Grading can be authorized on slopes over 30 percent with variance approval.
- **Agriculture.** Crop production, grazing, agricultural exempt structures, and agricultural roads exclusively for these uses, would be exempt from the 30 percent limitation.

METHOD

This subsection is proposed to be added to Sections 22.52.060 / 23.05.030, which discuss permit thresholds for grading.

RESULTS

This prohibition would ensure compliance with the COSE, if policy SL 1.3.2 is adopted as part of the COSE. The Draft EIR found that inclusion of this policy could result in a beneficial impact to visual resources, but would also result in a significant and unavoidable impact (Class I impact) to agricultural resources. The significant and unavoidable impact would occur because limiting development to level terrain could potentially force development on prime agricultural soils.

7) Add provisions for hydromodification.

SECTIONS AFFECTED

LUO Section 22.10.155, subsection G.9 – Hydromodification (new)
LUO Section 22.52.110, subsection D – Drainage Plan Content (formerly 22.52.080B)
LUO Section 22.52.150, subsection B – Drainage Standards (formerly 22.52.130B)
CZLUO Section 23.04.450, subsection g(9) – Hydromodification (new)
CZLUO Section 23.05.040, subsection d – Drainage Plan Content (formerly subsection b)
CZLUO Section 23.05.048, subsection b – Drainage Standards (formerly 23.05.050)

PURPOSE

Hydromodification BMPs are not presently required under the County's SWMP. While this is the case, hydromodification is clearly on the horizon. Preparing the ordinance to incorporate hydromodification measures will encourage efficiency, as this will avoid the necessity to amend the ordinance again once the measures are formally put into place.

The Regional Water Quality Control Board (RWQCB) has indicated an intent to require that hydromodification measures also be incorporated into the County's Stormwater Management Program (SWMP). In short, hydromodification would be site design to:

- Make post-development runoff volumes equal to pre-development runoff – or in *dynamic equilibrium* with the landscape and receiving waters.
- Make groundwater storage of post-development runoff equal to pre-development levels through infiltration and recharge.
- Maintain watercourse geomorphology at natural levels (e.g. sediment supply and transport).
- Optimize riparian and aquatic habitats.

Specific hydromodification BMPs for our region have not yet been developed. The RWQCB anticipates that these measures will be developed collaboratively with the cooperation of the jurisdictions in the Central Coast region and the non-profit Low Impact Development Center. The County is currently participating in the collaborative effort and intends to fully implement the hydromodification requirements that are anticipated for inclusion in the County's future updates to the SWMP.

DESCRIPTION

In compliance with the SWMP, the County is developing an LID Handbook. The LID Handbook will include a chapter on hydromodification. The proposed ordinance revisions would require that projects triggering drainage plan review or review under the Stormwater Management Ordinance (22.10.155 / 23.04.450) will be need to incorporate hydromodification measures. This requirement

will only apply once such measures are added to the County's LID Handbook and required by the County's SWMP.

METHOD

Ordinance sections requiring hydromodification measures are proposed to be added both to the Stormwater Management Ordinance (22.10.155G.9 / 23.04.450.g(9)) and to the section concerning drainage plan contents (22.52.110D / 23.05.040.d). An additional operational standard requiring the implementation of hydromodification would also be added to the drainage standards section (22.52.150B / 23.05.048.b)

RESULTS

Inclusion of hydromodification provisions in the proposed Grading and Stormwater Revisions would enable future implementation of hydromodification without necessitating further ordinance amendments.

8) Bring coastal and inland grading ordinances into alignment.

SECTIONS AFFECTED

LUO Chapter 22.52
CZLUO Sections 23.05.020 through 23.05.059.

PURPOSE

While the inland grading ordinance was comprehensively updated in 1999, the coastal grading ordinance was not similarly updated. There are differences in the two ordinances in terms of organization, operational standards, and construction standards. Additionally, the triggers for grading permits and exemptions from grading permits differ between the two ordinances. This can lead to some confusion as the rules and tools for addressing grading differ in the two ordinances. To avoid confusion and to ensure uniform administration, it has generally been the County's practice to keep same or very similar regulations across the Coastal Zone boundary. It is still, however, necessary to customize the coastal version of any ordinance to ensure consistency with the Local Coastal Program.

Through the 1999 inland grading ordinance update, the following modifications/additions were made, which were not carried over to the Coastal Zone Land Use Ordinance:

- Update in reference from Chapter 70 of the Uniform Building Code to Appendix Chapter 33 of the 1997 Uniform Building Code.
- Procedures added for modifications to approved plans, corrections to hazardous conditions, and emergency work.
- Clarification on who is qualified to prepare grading plans.
- Reducing the trigger for engineered grading from 30 percent slopes to 20 percent slopes.
- Addition of criteria for approval of a grading permit.
- Establishment of the "request for relief" process, where the Director may waive or modify requirements of the grading ordinance.
- Modifications to non-agricultural exemptions.
- Establishment of the four-tiered agricultural exemption system.

- Additions to the required contents of a grading permit application.
- Requirement for a soils report and engineering geology report moved to engineered grading.
- Addition of criteria for when an erosion and sedimentation plan is needed.
- Addition of required contents for an erosion and sedimentation control plan.
- Addition of groundwater recharge requirements.
- Addition of language authorizing the Director to condition grading permits.
- Establishment of specific procedures for bonding.
- Addition of procedures for revocation of grading permits.
- Addition of the ability to require a restoration permit where unpermitted grading cannot be authorized as built.
- Establishment of a section discussing construction procedures and inspections, including requirements for when inspections will occur, what final reports are needed, dust/debris control, and limitation on work hours.
- Addition to and strengthening of grading and drainage operational standards.
- Addition of erosion and sedimentation control, groundwater, and pond/reservoir operational standards.
- Establishment of a separate enforcement section for grading.

Additionally, a few standards exist in the coastal grading ordinance, which have not been applied in the inland portions of the County. These sections include the following:

- Standards encouraging the retention of natural channels and runoff patterns.
- Standards encouraging the use of LID techniques, such as vegetated swales.
- Standards requiring the incorporation of BMPs into drainage design.

DESCRIPTION

This proposal would carry over inland grading ordinance standards to the coastal grading ordinance. Existing standards which are unique to the coastal grading ordinance would remain. Those translatable to the inland area would be carried over to the inland grading ordinance.

METHOD

Updates would occur throughout both the inland and coastal grading ordinances.

RESULTS

The inland and coastal grading ordinance would be in relative alignment, enabling consistent administration of grading requirements countywide.

9) Expand agricultural exemptions and introduce alternative review to the Coastal Zone

SECTIONS AFFECTED

CZLUO Section 23.05.032 – Exemptions from Grading Permits (formerly Section 23.05.026)
CZLUO Section 23.05.034 – Alternative Review Program (new)

PURPOSE

The purpose for amending the agricultural exemptions in the Coastal Zone is two fold:

- Agriculturalists have expressed a desire to allow certain types of agricultural grading to occur without a County grading permit.
- The California Coastal Commission has expressed concerns with the County's existing coastal zone agricultural exemption. They have encouraged the County to add erosion and sedimentation requirements to agricultural exempt grading in order to protect coastal resources. They have further encouraged use of alternative review program based involving the NRCS or other resource agencies.

Presently, the Coastal Zone grading ordinance creates a single broad exemption for agriculture:

Agricultural grading activities including the preparation of land for cultivation, other than grading for roadwork or pads for structures.

As a result, some common agricultural practices, such as creating agricultural roads, modifying drainage systems, and creating stock ponds would all require a grading permit from the County. Conversely, preparation of land for cultivation has been interpreted to allow large-scale recontouring of terrain without limitations on slope or a requirement for erosion and sedimentation control.

During the 2001 Periodic Review of the County's Local Coastal Program by the California Coastal Commission, the Commission identified, amongst their concerns, two issues relevant to the grading ordinance:

- Agricultural grading occurring under the existing cultivation exemption has the potential to affect coastal resources as a result of erosion and sedimentation, changes to hydrology and drainage, and runoff from intensified agricultural uses. To address these concerns the exemption should be modified.
- The regulatory process should be streamlined for agriculture by adopting a program that encourages NRCS or other agencies to prepare general programs to address erosion and sedimentation. The program would need to be certified through the review and issuance of master permit by the County.

The Coastal Commission's specifically recommended that agricultural exemption should be limited to tilling of existing agricultural fields and grading performed under a program developed by NRCS or another appropriate agency (Recommendation 3-2b). They also suggested that activities involving preparation of land for cultivation could be exemptable if no more than one-quarter acre of native vegetation is removed, activities are set back a minimum of 100 feet from Environmentally Sensitive Habitat Areas (ESHAs), and would occur on slopes of less than 30 percent.

In 2003, the County attempted to add the four-tiered exemption program into the Coastal Zone Land Use Ordinance. The Coastal Commission did not move forward with this proposal on the basis that the exemption program would effectively exempt "development" (as defined by the Coastal Act) from obtaining a Coastal Development Permit. The Commission contended that exemptions occurring in Chapter 5 of the Coastal Zone Land Use Ordinance must still comply with Coastal Development Permit exemptions established in Chapter 3 of the Coastal Zone Land Use Ordinance. As such, any modifications to the grading ordinance would need to provide a

mechanism to obtain a Coastal Development Permit for any agricultural grading which qualifies as “development.”

DESCRIPTION

Agricultural grading. The agricultural grading conditional exemptions that are established in the inland ordinance (with proposed modifications) are proposed to be carried over to the Coastal Zone. This would exempt ongoing agricultural production from permits. Additionally creation of new fields, irrigation improvements, and small ponds would qualify for conditional exemption; however, the owner must first complete an agricultural grading form with the County.

Alternative review. NRCS and RCD presently collaborate with the County on alternative review projects in the inland area. Under this proposal, the alternative review program would be carried over to the coastal zone. Certain classes of agricultural grading would be able to be reviewed, approved, and inspected by NRCS and RCD in lieu of county permitting requirements. NRCS and RCD are currently pursuing a program (*Partners in Restoration*), which will act as a master program for alternative review projects. The County would be able to approve a master CDP for this program in order to satisfy the Coastal Commission’s requirements.

Coastal development permits. Agricultural cultivation is not included in the definition of “development” under the Coastal Act; however, other agricultural facilities, such as roads, ponds, etc., may fall under that definition. For these projects, currently, issuance of a grading permit constitutes approval of a coastal development permit (CDP).

In many circumstances, “development” will trigger a discretionary land use permit (Minor Use Permit, Development Plan, Variance, etc.). Issuance of the discretionary land use permit would also constitute approval of a CDP. In these cases, exemption from subsequent grading permits is not of concern, as a CDP has already been obtained.

In other circumstances, a project does not constitute “development” and therefore does not require CDP approval. Again, in these cases, an exemption from a grading permit is not of concern, as the grading permit would not otherwise act as a means for CDP approval.

Projects that are “development” but do not otherwise require a land use permit, however, could pose a problem regarding CDP issuance. If the County were to exempt these uses from County grading permit requirements, there would be no mechanism to obtain a CDP. Essentially, this would result in a de-facto exemption, allowing “development” to occur without a CDP. The Coastal Commission has asserted that doing so would be in contrast with state law.

To avoid this problem, the exemption and agricultural grading programs will only be available to projects which have already obtained a CDP for the activity through land use permit approval, or which are exempt from the CDP requirement. These projects may pursue approval through the alternative review process or by obtaining a grading permit. In either case, the Director’s approval (approval of the agricultural grading form or approval of the grading permit) would constitute approval of a CDP. A flow chart is attached (Attachment 5) which summarizes this procedure.

Coastal Commission recommendations. These modifications will address the Coastal Commission’s Periodic Review recommendations as follows:

- Agricultural grading – The exemption for agricultural grading for new fields will be limited to slopes of less than 20 percent. Agriculturalists seeking to grade for new fields on slopes in excess of 20 percent could seek approval through the alternative review process.
- Streamlined process – This proposal would implement a streamlined alternative review process, which could be used by agriculturalists.

METHOD

Modifications to the section on grading permit exemptions (Section 23.05.032) and addition of a new section establishing the alternative review program (Section 23.05.034) would accomplish this task.

RESULTS

Modification of the agricultural exemption and introduction of the alternative review program would result in the following:

- Compliance with Coastal Commission Periodic Review recommendation 3-2b.
- A flexible alternative review program to permit agricultural facilities (e.g. roads, ponds, etc.), while ensuring the protection of coastal resources through effective erosion and sedimentation control and appropriate agricultural practices.
- An overall improvement to water quality.

The Draft EIR for the proposed Grading and Stormwater Management Revisions found that inclusion of this program as part of the revisions would result in a potential Class I impact to water resources. This impact would occur, because this program could facilitate intensification of agricultural uses in areas with water availability concerns, such as the Chorro and Los Osos Valleys. The magnitude of the impact is unknown.

10) Lodge Hill erosion control program.

SECTIONS AFFECTED

Chapter 7 of the North Coast Area Plan, Cambria Urban Area Standards

PURPOSE

Program 14 (Chapter 6 – Combining Designations) requires a comprehensive erosion and sedimentation control management plan be developed for the Lodge Hill area. Until such a program is developed, the proposed modification would allow for increased review of Lodge Hill development projects in compliance with the new Stormwater Management Ordinance (Section 23.04.450).

DESCRIPTION

The proposed planning area standard would require development in the Residential Single Family land use category in the Lodge Hill area to comply with Section 23.04.450, pertaining to stormwater management.

METHOD

A planning area standard would be added to Chapter 7 of the North Coast Area Plan in the Residential Single Family portion of the Cambria Urban Area Standards.

RESULTS

The implementation of this planning area standard would result in a reduction of erosion and sedimentation impacts in the Lodge Hill area, and therefore would result in an overall improvement to water quality.

11) Reformatting and refining.

SECTIONS AFFECTED

LUO Chapter 22.52

CZLUO Sections 23.05.020 through 23.05.059

PURPOSE

The purpose of reformatting was to provide a more logical reading order, and the ability to more easily locate applicable ordinance sections.

DESCRIPTION

The location of sections were re-ordered to provide a more logical progression. For example:

- *Review, Approval, and Permits* was moved up in progression, before sections pertaining to grading plan, drainage plan, and erosion and sedimentation plan contents.
- *Construction Procedures and Inspections* were moved beyond the *Standards* section.
- *Professional Education Program and Fees* were placed at the end of the chapter, rather than at the beginning.

In one case, a section was combined. *Purpose* and *Purpose and Intent of Grading Regulations* were combined and reworded to form a single *Purpose and Intent* section.

Some sections were split into separate sections, including the following:

- *Alternative Review Program* was separated into its own section, whereas it used to be part of the *Exemptions from Grading Permits* section in the inland ordinance.
- *Construction Procedures and Inspections* were separated into two individual sections.

Some sections were changed in format from paragraphs to bullet points. For example:

- Grading plan contents.
- The requirement criteria for engineered grading.
- The requirement criteria for erosion and sedimentation control plans.

New sections were added and existing sections were modified to clarify various aspects of the grading ordinance. For example:

- *Responsibility of the Landowner* was provided to reinstate that each landowner is responsible for compliance with provisions of the grading ordinance.

- Reference to Table 2-3 / Table 3-A were provided to remind landowners that grading permits can trigger land use permits based on area of site disturbance.
- Notes are provided reminding applicants that they must ensure that they have obtained permits from other local, state, and federal agencies, whether or not a County grading permit is required.
- A reference was made to the Class 33 CEQA exemption for small habitat restoration projects.
- Grading permit time limits were changed to conform to Title 19 (Building and Construction Ordinance) time limits.
- Content requirements for grading plans and drainage plans were updated and expanded.
- Language was changed in the erosion and sedimentation control plan section to avoid the common misconception that erosion and sedimentation control plans are only required during the rainy season.
- The list of required inspections was updated to ensure compliance with NPDES procedures.

Redundant and contradictory provisions were addressed. For example:

- The section under *Standards* stating that agricultural ponds are exempt (in contradiction to the requirement that they be permitted for alternative review) was removed.
- The two subsections addressing timing of grading permit approval (1—prior to building permit *application*; 2—prior to building permit *acceptance*) were combined into a single subsection.

Environmental mitigation measures were incorporated into the ordinance, as identified in the Draft EIR. These include the following:

- Addition of language pertaining to avoidance of locating development on prime farmland to the “criteria for approval” subsection;
- Incorporation of air quality requirements pertaining to fugitive dust, naturally occurring asbestos, and hydrocarbon contaminated soils;
- Incorporation of an operational standard pertaining to topsoil preservation;
- Exemption for agricultural production uses from drainage plan preparation;
- Exemption for agricultural production uses from SWPPP requirements, consistent with the RWQCB’s conditional waiver for agriculture;
- Addition of limitations on importation and exportation of fill material; and
- Addition of operational and design standards on stormwater and drainage devices to ensure against impacts to visual resources.

In many sections and subsections a brief summary phrase was provided in boldface to aid the reader in locating a particular standard or requirement.

METHOD

Modifications were made throughout Chapter 22.52 and Sections 23.05.020 through 23.05.059 to accommodate the reformatting.

RESULTS

Despite the overall complexity and length of the ordinances, these reformatting and refining measures may help the reader locate pertinent sections of the ordinance and allow for better understanding of ordinance provisions. This could potentially help to reduce unpermitted grading

as a result of misinterpretation, and could potentially aide in consistent implementation of the ordinance.

12) Update section references.

SECTIONS AFFECTED

LUO Chapter 22.52

LUO Sections 22.14.060, 22.94.020C

CZLUO Sections 23.05.020 through 23.05.059

CZLUO Sections 23.02.030.b(8), 23.02.033.a(5)

Coastal Plan Policies – Watersheds: 7-10, 13; Visual and Scenic Resources: 5

North Coast Area Plan, Chapter 7, Cambria Urban Area Standards, Residential Single Family Standard 4.A

PURPOSE

The purpose of updating section references is to ensure clarity and effective administration of the Land Use Ordinance, Coastal Zone Land Use Ordinance, and General Plan.

DESCRIPTION

Section references are proposed to be updated as described in Public Hearing Draft Attachment F.

METHOD

Individual section references are proposed for update as specified in Public Hearing Draft Attachment F.

RESULTS

Existing ordinance and General Plan documents will accurately refer to updated sections.

13) Add definitions.

SECTIONS AFFECTED

LUO Chapter 22.80 – Definitions

CZLUO Chapter 23.11 – Definitions

PURPOSE

The purpose for updating definitions is to define new terminology and to clarify existing terminology.

DESCRIPTION

Definitions are proposed to be added or updated for the following terms:

- Best Management Practices (BMPs).
- Excavation.
- Impervious.
- Low Impact Development (LID) Handbook.
- Municipal Separate Storm Sewer System (MS4).
- Permit, General.
- Permit, General Construction.
- Permit Holder.
- Redevelopment.
- Regulated Development.
- Residence, Single-Family Hillside.
- Site Disturbance.
- Stormwater Conveyance System.
- Storm Event.

METHOD

Definitions will be added to and/or amended in Chapters 22.80 and 23.11.

RESULTS

Clearly written definitions will help to avoid misunderstanding and will assist in the administration of the Grading and Stormwater Management Ordinances.